

1 HOUSE BILL NO. 257

2 INTRODUCED BY J. HINKLE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROHIBITING
5 ACTIONS THAT IMPEDE A PRIVATE BUSINESS'S ABILITY TO CONDUCT BUSINESS; PROHIBITING
6 CERTAIN TYPES OF LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS; PROHIBITING AN
7 EMERGENCY PLAN OR PROGRAM THAT RESTRICTS THE ABILITY OF A PRIVATE BUSINESS TO
8 CONDUCT BUSINESS; PROHIBITING A LOCAL BOARD OF HEALTH AND LOCAL HEALTH OFFICER
9 FROM ACTIONS THAT RESTRICT THE ABILITY OF A PRIVATE BUSINESS TO CONDUCT BUSINESS;
10 AMENDING SECTIONS 7-1-111, 7-1-2103, 7-1-4124, 7-5-103, 7-5-121, 7-5-4201, 10-3-301, 50-2-116, 50-2-
11 118, 50-2-123, AND 50-2-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 7-1-111, MCA, is amended to read:

16 **"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with
17 self-government powers is prohibited from exercising the following:

18 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
19 exercise of an independent self-government power;

20 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to
21 those provisions, it may exercise any power of a public employer with regard to its employees;

22 (3) any power that applies to or affects the public school system, except that a local unit may impose
23 an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall
24 exercise any power that it is required by law to exercise regarding the public school system;

25 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public
26 convenience and necessity pursuant to Title 69, chapter 12;

27 (5) any power that establishes a rate or price otherwise determined by a state agency;

28 (6) any power that applies to or affects any determination of the department of environmental quality

1 with regard to any mining plan, permit, or contract;

2 (7) any power that applies to or affects any determination by the department of environmental quality
3 with regard to a certificate of compliance;

4 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
5 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
6 months' imprisonment, or both, except as specifically authorized by statute;

7 (9) any power that applies to or affects the right to keep or bear arms;

8 (10) any power that applies to or affects a public employee's pension or retirement rights as
9 established by state law, except that a local government may establish additional pension or retirement
10 systems;

11 (11) any power that applies to or affects the standards of professional or occupational competence
12 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

13 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title
14 75, chapter 7, part 1, or Title 87;

15 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is
16 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title
17 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require
18 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences
19 within the local government's jurisdiction.

20 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

21 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
22 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
23 may enter into a cooperative agreement with the department of agriculture concerning the use and application
24 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
25 government from adopting or implementing zoning regulations or fire codes governing the physical location or
26 siting of fertilizer manufacturing, storage, and sales facilities.

27 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing,
28 sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable

1 seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from
 2 adopting or implementing zoning regulations or building codes governing the physical location or siting of
 3 agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution
 4 facilities.

5 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
 6 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
 7 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
 8 communications commission of the United States;

9 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
 10 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
 11 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
 12 "technician" or higher class, issued by the federal communications commission of the United States;

13 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
 14 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
 15 highway that is under the jurisdiction of an entity other than the local government unit;

16 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
 17 relation to a wildfire;

18 (21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products
 19 providers, and adult-use dispensaries from being located within the jurisdiction of the local government except
 20 as allowed in Title 16, chapter 12; or

21 (22) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and
 22 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-
 23 5-121(2)(c)(iv)."

24

25 **Section 2.** Section 7-1-2103, MCA, is amended to read:

26 **"7-1-2103. County powers.** A county has power to:

27 (1) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), sue and be sued;

28 (2) purchase and hold lands within its limits;

- 1 (3) make contracts and purchase and hold personal property that may be necessary to the exercise of
2 its powers;
- 3 (4) make orders for the disposition or use of its property that the interests of its inhabitants require;
- 4 (5) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in
5 7-6-2527, under its exclusive jurisdiction unless prohibited by law."

6

7 **Section 3.** Section 7-1-4124, MCA, is amended to read:

8 **"7-1-4124. Powers.** A municipality with general powers has the power, subject to the provisions of
9 state law, to:

- 10 (1) enact ordinances and resolutions;
- 11 (2) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), sue and be sued;
- 12 (3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal
13 property;
- 14 (4) contract with persons, corporations, or any other governmental entity;
- 15 (5) pay debts and expenses;
- 16 (6) borrow money;
- 17 (7) solicit and accept bequests, donations, or grants of money, property, services, or other
18 advantages and comply with any condition that is not contrary to the public interest;
- 19 (8) execute documents necessary to receive money, property, services, or other advantages from the
20 state government, the federal government, or any other source;
- 21 (9) make grants and loans of money, property, and services for public purposes;
- 22 (10) require the attendance of witnesses and production of documents relevant to matters being
23 considered by the governing body;
- 24 (11) hire, direct, and discharge employees and appoint and remove members of boards;
- 25 (12) ratify any action of the municipality or its officers or employees that could have been approved in
26 advance;
- 27 (13) have a corporate seal and flag;
- 28 (14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a

1 public use authorized by law;

2 (15) initiate a civil action to restrain or enjoin violation of an ordinance;

3 (16) enter private property, obtaining warrants when necessary, for the purpose of enforcing

4 ordinances that affect the general welfare and public safety;

5 (17) conduct a census;

6 (18) conduct inventories of public property and preparatory studies;

7 (19) condemn and demolish hazardous structures;

8 (20) purchase insurance and establish self-insurance plans;

9 (21) impound animals and other private property creating a nuisance or obstructing a street or
10 highway;

11 (22) establish quarantines;

12 (23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-
13 4150; and

14 (24) exercise powers not inconsistent with law necessary for effective administration of authorized
15 services and functions."

16

17 **Section 4.** Section 7-5-103, MCA, is amended to read:

18 **"7-5-103. Ordinance requirements.** (1) All ordinances must be submitted in writing in the form
19 prescribed by resolution of the governing body.

20 (2) An ordinance passed may not:

21 (a) __contain more than one comprehensive subject, which must be clearly expressed in its title, except
22 ordinances for codification and revision of ordinances;

23 (b) compel a private business to deny a customer of the private business access to the premises or
24 access to goods or services;

25 (c) deny a customer of a private business the ability to access goods or services provided by the
26 private business; or

27 (d) include any of the following actions for noncompliance with a resolution or ordinance that includes
28 actions described in subsections (2)(b) and (2)(c):

- 1 (i) allow for the assessment of a fee or fine;
 2 (ii) require the revocation of a license required for the operation of a private business;
 3 (iii) find a private business owner guilty of a misdemeanor; or
 4 (iv) bring any other retributive action against a private business owner, including but not limited to
 5 criminal charges.

6 (3) The prohibitions provided in subsections (2)(b) through (2)(d) do not apply to the adoption of an
 7 ordinance allowed in 75-7-411.

8 ~~(3)~~(4) An ordinance must be read and adopted by a majority vote of members present at two
 9 meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be
 10 posted and copies must be made available to the public.

11 ~~(4)~~(5) After passage and approval, all ordinances must be signed by the presiding officer of the
 12 governing body and filed with the official or employee designated by ordinance to keep the register of
 13 ordinances."
 14

15 **Section 5.** Section 7-5-121, MCA, is amended to read:

16 **"7-5-121. Resolution requirements.** (1) All resolutions ~~shall~~ must be submitted in the form
 17 prescribed by resolution of the governing body.

18 (2) Resolutions may not:

19 (a) compel a private business to deny a customer of the private business access to the premises or
 20 access to goods or services;

21 (b) deny a customer of a private business the ability to access goods or services provided by the
 22 private business; or

23 (c) include any of the following actions for noncompliance with a resolution or ordinance that includes
 24 actions described in subsections (2)(a) and (2)(b):

25 (i) allow for the assessment of a fee or fine;

26 (ii) require the revocation of a license required for the operation of a private business;

27 (iii) find a private business owner guilty of a misdemeanor; or

28 (iv) bring any other retributive action against a private business owner, including but not limited to

1 criminal charges.

2 ~~(2)~~(3) Resolutions may be submitted and adopted at a single meeting of the governing body.

3 ~~(3)~~(4) After passage and approval, all resolutions ~~shall~~ must be entered into the minutes and signed
4 by the chairperson of the governing body."

5

6 **Section 6.** Section 7-5-4201, MCA, is amended to read:

7 **"7-5-4201. Municipal ordinances.** (1) The style of ordinances may be as follows: "Be it ordained by
8 the council of the city of.... (or town of....)", and all ordinances may be published or posted as prescribed by the
9 council.

10 (2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor
11 or the person acting in the mayor's stead and must be recorded in a book kept by the clerk, called "The
12 Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or
13 codified.

14 (3) An ordinance may not:

15 (a) include a prohibited action provided in 7-5-103; or

16 (b) contain~~be passed containing~~ more than one subject, which must be clearly expressed in its title,
17 except ordinances for the codification and revision of ordinances."

18

19 **Section 7.** Section 10-3-301, MCA, is amended to read:

20 **"10-3-301. State disaster and emergency plan.** (1) The state disaster and emergency plan and
21 program may provide for:

22 (a) prevention and minimization of injury and damage caused by disaster;

23 (b) prompt and efficient response to an incident, emergency, or disaster;

24 (c) emergency relief;

25 (d) identification of areas particularly vulnerable to disasters;

26 (e) recommendations for preventive and preparedness measures designed to eliminate or reduce
27 disasters or their impact;

28 (f) organization of personnel and chains of command;

1 (g) coordination of federal, state, and local disaster and emergency activities; and

2 (h) other necessary matters.

3 (2) The state disaster and emergency plan and program may not:

4 (a) compel a private business to deny a customer of the private business access to the premises or
5 access to goods or services; or

6 (b) deny a customer of a private business the ability to access goods or services provided by the
7 private business.

8 ~~(2)~~(3) In preparing and maintaining the state disaster and emergency plan and program, the division
9 may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and
10 volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division
11 may encourage them to seek advice from these sources."

12

13 **Section 8.** Section 50-2-116, MCA, is amended to read:

14 **"50-2-116. Powers and duties of local boards of health.** (1) Except as provided in subsection (4),
15 ~~in~~ in order to carry out the purposes of the public health system, in collaboration with federal, state, and local
16 partners, each local board of health shall:

17 (a) appoint and fix the salary of a local health officer who is:

18 (i) a physician;

19 (ii) a person with a master's degree in public health; or

20 (iii) a person with equivalent education and experience, as determined by the department;

21 (b) elect a presiding officer and other necessary officers;

22 (c) employ qualified staff;

23 (d) adopt bylaws to govern meetings;

24 (e) hold regular meetings at least quarterly and hold special meetings as necessary;

25 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:

26 (i) epidemiological tracking and investigation;

27 (ii) screening and testing;

28 (iii) isolation and quarantine measures;

- 1 (iv) diagnosis, treatment, and case management;
- 2 (v) abatement of public health nuisances;
- 3 (vi) inspections;
- 4 (vii) collecting and maintaining health information;
- 5 (viii) education and training of health professionals; or
- 6 (ix) other public health measures as allowed by law;
- 7 (g) protect the public from the introduction and spread of communicable disease or other conditions of
- 8 public health importance, including through actions to ensure the removal of filth or other contaminants that
- 9 might cause disease or adversely affect public health;
- 10 (h) supervise or make inspections for conditions of public health importance and issue written orders
- 11 for compliance or for correction, destruction, or removal of the conditions;
- 12 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
- 13 of public health laws, rules, and local regulations;
- 14 (j) identify to the department an administrative liaison for public health. The liaison must be the local
- 15 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
- 16 time local health officer, the liaison must be the highest ranking public health professional employed by the
- 17 jurisdiction.
- 18 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
- 19 state standards for the control and disposal of sewage from private and public buildings and facilities that are
- 20 not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting
- 21 variances from the minimum requirements that are identical to standards promulgated by the board of
- 22 environmental review and must provide for appeal of variance decisions to the department as required by 75-5-
- 23 305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling
- 24 of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the
- 25 authorization of the private property owner.
- 26 (2) Local boards of health may:
- 27 (a) accept and spend funds received from a federal agency, the state, a school district, or other
- 28 persons or entities;

1 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
2 and public buildings and facilities;

3 (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

4 (i) for the control of communicable diseases;

5 (ii) for the removal of filth that might cause disease or adversely affect public health;

6 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
7 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
8 directly into state water and that are not required to have an operating permit as required by rules adopted
9 under 75-5-401;

10 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
11 establishments and that are not less stringent than state standards for tattooing and body-piercing
12 establishments;

13 (v) for the establishment of institutional controls that have been selected or approved by the:

14 (A) United States environmental protection agency as part of a remedy for a facility under the federal
15 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

16 (B) department of environmental quality as part of a remedy for a facility under the Montana
17 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

18 (vi) to implement the public health laws; and

19 (d) promote cooperation and formal collaborative agreements between the local board of health and
20 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,
21 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
22 addressed in this title.

23 (3) A local board of health may provide, implement, facilitate, or encourage other public health
24 services and functions as considered reasonable and necessary.

25 (4) In the course of implementing the powers and duties provided in this section, a local health board
26 may not:

27 (a) compel a private business to deny a customer of the private business access to the premises or
28 access to goods or services;

- 1 **(b) deny a customer of a private business the ability to access goods or services provided by the**
 2 **private business; or**
- 3 **(c) include any of the following actions for noncompliance of actions described in subsections (4)(a)**
 4 **and (4)(b):**
- 5 **(i) require the assessment of a fee or fine;**
- 6 **(ii) require the revocation of a license required for the operation of a private business;**
- 7 **(iii) find a private business owner guilty of a misdemeanor; or**
- 8 **(iv) bring any other retributive action against a private business owner, including but not limited to an**
 9 **action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge."**

10

11 **Section 9.** Section 50-2-118, MCA, is amended to read:

12 **"50-2-118. Powers and duties of local health officers.** (1) Except as provided in subsection (2), in
 13 in order to carry out the purpose of the public health system, in collaboration with federal, state, and local
 14 partners, local health officers or their authorized representatives shall:

15 ~~(1)~~(a) make inspections for conditions of public health importance and issue written orders for
 16 compliance or for correction, destruction, or removal of the condition;

17 ~~(2)~~(b) take steps to limit contact between people in order to protect the public health from imminent
 18 threats, including but not limited to ordering the closure of buildings or facilities where people congregate and
 19 canceling events;

20 ~~(3)~~(c) report communicable diseases to the department as required by rule;

21 ~~(4)~~(d) establish and maintain quarantine and isolation measures as adopted by the local board of
 22 health; and

23 ~~(5)~~(e) pursue action with the appropriate court if this chapter or rules adopted by the local board or
 24 department under this chapter are violated.

25 (2) In the course of implementing the powers and duties provided in this section, a local health officer
 26 may not:

27 (a) compel a private business to deny a customer of the private business access to the premises or
 28 access to goods or services;

- 1 **(b) deny a customer of a private business the ability to access goods or services provided by the**
2 **private business; or**
- 3 **(c) include any of the following actions for noncompliance of actions described in subsections (2)(a)**
4 **and (2)(b):**
- 5 **(i) require the assessment of a fee or fine;**
6 **(ii) require the revocation of a license required for the operation of a private business;**
7 **(iii) find a private business owner guilty of a misdemeanor; or**
8 **(iv) bring any other retributive action against a private business owner, including but not limited to an**
9 **action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge."**

10

11 **Section 10.** Section 50-2-123, MCA, is amended to read:

12 **"50-2-123. Compliance order authorized.** (1) If a person refuses or neglects to comply with a written
13 order of a state or local health officer within a reasonable time specified in the order, the state or local health
14 officer may cause the order to be complied with and initiate an action to recover any expenses incurred from
15 the person who refused or neglected to comply with the order. The action to recover expenses shall must be
16 brought in the name of the city or county.

17 (2) An order of compliance or action allowed pursuant to subsection (1) may not be initiated for an
18 order that violates 50-2-116(4) or 50-2-118(2)."

19

20 **Section 11.** Section 50-2-124, MCA, is amended to read:

21 **"50-2-124. Penalties for violations.** (1) A person who does not comply with rules adopted by a local
22 board that are not in conflict with 50-2-116(4) or 50-2-118(2) is guilty of a misdemeanor. On conviction, the
23 person shall be fined not less than \$10 or more than \$200.

24 (2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the
25 provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a
26 misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned
27 for not more than 90 days, or both.

28 (3) Each day of violation constitutes a separate offense.

1 (4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the
2 violation occurs."

3

4 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

5

- END -